

Appl. No. : **09/517,043**
Filed : **March 2, 2000**

REMARKS

In response to the May 27, 2004 Office Action, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. Claims 1-13 and 18-40 are pending in the present application.

As an initial matter, Applicant notes that the May 27, 2004 Office Action Summary states that the Office Action is in response to Applicant's Response filed on March 17, 2004. The correct date for Applicant's Response is February 27, 2004.

In the May 27, 2004 Office Action the Examiner responded to Applicant's February 27, 2004 Response (hereinafter, "Applicant's previous response"), and the Examiner rejected Claims 1-13 and 18-40. In particular, the Examiner rejected Claims 18-20, 24, and 35 under 35 U.S.C. § 102(a) and (e) as being anticipated by U.S. Patent No. 5,950,172 to Klingman (hereinafter, "Klingman"). Claims 1-4, 6, 9-13, 22, 23, 25, 27, 30-34, and 36-40 were rejected under 35 U.S.C. § 103(a) over Klingman in view of U.S. Patent No. 5,956,693, to Geerlings (hereinafter, "Geerlings"). Claims 5, 7, 8, 21, and 29 were rejected under 35 U.S.C. § 103(a) in view of Epinions.com. Claim 26 was rejected under 35 U.S.C. § 103(a) over Klingman. Claim 28 was rejected under 35 U.S.C. § 103(a) over Klingman in view of U.S. Patent No. 6,092,049 to Chislenko (hereinafter, "Chislenko"). In addition, Claims 18-35 were rejected under 35 U.S.C. § 101 and Claims 18, 24, 26, and 30 were rejected under 35 U.S.C. § 112, second paragraph.

Discussion of the rejections under 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph.

With respect to Claim 18, Applicant respectfully maintains that Claim 18, as previously pending, is statutory subject matter under 35 U.S.C. § 101, and is definite under 35 U.S.C. § 112, second paragraph. Nonetheless, in order to expedite allowance of the claims, Applicant has amended Claim 18 as suggested by the Examiner in the interview. In addition, while Applicant respectfully maintains that Claims 24, 26, and 30, as previously pending, are definite under 35 U.S.C. § 112, second paragraph, in order to expedite allowance of the claims, Applicant has amended Claims 24, 26, and 30 as suggested by the Examiner in the Office Action. Applicant therefore respectfully requests the Examiner to withdraw the rejection under 35 U.S.C. § 101 of Claim 18, as well as Claims 19-35, which depend from Claim 18. Applicant further requests that the Examiner withdraw the rejection of Claims 18, 24, 26, and 30 under 35 U.S.C. § 112, second paragraph.

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Discussion of the Examiner's Response to Arguments

In the Office Action, the Examiner categorized several of Applicant's arguments into seven different categories. However, rather than addressing Applicant's arguments in the context of individual claims, most of the Examiner's responses treat the arguments without reference to specific claims. In addition, Applicant respectfully maintains that in summarizing Applicant's arguments, the Examiner has in certain instances not fully or accurately presented Applicant's arguments and positions. Nonetheless, Applicant will endeavor to address each of the Examiner's responses.

Response (1). The Examiner characterizes Applicant's argument (1) as follows: "Klingman does not teach or suggest a textual review or that the textual review is displayed to other customers." In response, the Examiner takes the position that Klingman, in Figures 5, 8C, and 8D, and at column 11, lines 1-7 and 30-45, Column 13, lines 15-19 and 40-49, Column 14, lines 27-30, Column 18, lines 1-10, and Column 21, lines 10-20, discloses that a buyer of a purchased item can enter rating information and comments in the electronic form, and that the rating information and comments relating to the product are stored in the system and displayable to the next buyer. If the Examiner is referring to the box labeled "COMMENTS, ETC." illustrated in Figure 5, Applicant respectfully notes that there is no discussion in Klingman what is the content or intent of the comments. For example, the comments can be related to an explanation of when the graphs were generated, rather than being a textual review of one customer being presented to another customer. Further, Klingman, at Column 13, lines 15-19 and 40-49, simply recites

"While graphs or score displays such as those shown in FIGS. 5 and 6 may be employed in the preferred embodiment to represent distribution of scores over all responding scorers, other forms of representations of rating information may be utilized. For example, the simplest score is a value selected from a range, such 1 to 10 or 1 to 100. ... First, as the Internet becomes ubiquitous and more commerce occurs over the net, sophisticated information should be available to those who desire the same. Second, it is always possible to simplify the presentation of information. For example, some print newspapers use an icon in the movie review section in which the stylized view ranges from absent (having walked out) to sleeping, to upright and alert to standing on the chair applauding. "Complex" graphic scores can readily be mapped into simple "cartoon" icons to provide such simplistic displays."

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Thus, Klingman merely discloses providing numeric, graphical, or cartoon icons, rather than providing textual reviews to other customers as claimed.

Response (2). The Examiner characterizes Applicant's argument (2) as follows: "since the 'score' button is always present on the interface, Klingman does not take into account an evaluation period and therefore does not select a time for requesting a review of the purchased item, wherein the time is selected at least in part on an evaluation period." In response, the Examiner asserts that Klingman teaches setting a time to allow a review request of a consumer, wherein the time is selected based on an estimated evaluation period. However, the Examiner has mischaracterized Klingman. Klingman does not disclose or suggest "setting a time to allow a review request of a consumer, wherein the time is selected based on an estimated evaluation period," as argued by the Examiner. Instead, Klingman discloses accepting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product*. Further, the system disclosed by Klingman will accept a review for an item as soon as the item is purchased, and even before the item is delivered and evaluated by the user. Hence, Klingman does not disclose and is not concerned with selecting a time to allow a review request of a consumer based on an estimated evaluation period, as argued by the Examiner.

In addition, the Examiner now admits that Klingman does not expressly disclose selecting a time to request a review or providing the communication based at least in part on the selected time, and is now relying on Geerlings to teach this element. However, as discussed below, the Examiner has failed to provide an adequate motivation to modify Klingman with the disclosure of Geerling.

Response (3). The Examiner characterizes Applicant's argument (3) as follows: "Klingman does not teach or suggest inferring when the customer has evaluated the item or providing over the network an electronic review request in response to at least the inference at a time spaced apart from the order." In response the Examiner states the "inferring" means the act or process of deriving conclusions from premises known or assumed to be true." The Examiner goes on to assert that Klingman does teach "inferring when the customer has evaluated the item" when it assumes that the customer is ready to evaluate the item after purchase. The Examiner

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further asserts that Klingman does provide “over the network an electronic review request in response to at least the inference at a time spaced apart from the order,” by providing a review request in the form of a linked button that is accessible at a time after the order.” Applicant assumes that the linked button the Examiner is referring to is the “SCORE” button disclosed by Klingman.

However, the “SCORE” button in Klingman is not provided “over the network an electronic review request in response to at least the inference at a time spaced apart from the order,” as argued by the Examiner. Instead, whether or not a user has purchased a product, the “SCORE” button is displayed, and clicking on the “SCORE” button initiates several functional actions. Klingman discloses that “When a buyer wishes to “SCORE” the purchased product, as indicated by “clicking” on the SCORE button of the TRY display, an ‘800’ number is retrieved from the TRY server, and this number is used to place a call to the BUY server 48 that maintains the ID table 52. A caller ID will accompany the incoming ‘800’ number call to the BUY server. This incoming caller ID is used to search the table of stored buyers’ caller ID numbers. If a match is found, the buyer is allowed to enter his/her score in accordance with his/her satisfaction with the product.” Column 10, lines 46-58. Even assuming, *arguendo*, that the functionality of the Score button may only be accessed by a purchaser at a time after the product’s purchase, the Score button is nonetheless constantly presented, and so Klingman does not disclose providing “over the network an electronic review request in response to at least the inference at a time spaced apart from the order,” as argued by the Examiner.

Response (4). The Examiner characterizes Applicant’s argument (4) as follows: “Klingman does not expressly disclose rating a seller.” In response, the Examiner appears to assert that Klingman, in disclosing rating a product, discloses indirectly rating the seller. The Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to rate the seller of the item directly. However, the Examiner has mischaracterized Klingman. As discussed below, and as discussed in Applicant’s previous response, Klingman teaches rating an item as a way of *punishing the producer*, not the seller, of a product. Because Klingman is not concerned with rating the seller, either directly or indirectly, there would be no motivation to modify Klingman as proposed by the Examiner.

For example, Klingman discloses that “where *consumer feedback regarding a product* is favorable to the seller, scoring or rating information can be a very effective marketing tool for the

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seller” at Column 1, lines 42-44 [emphasis added], and “the buyer may wish to . . . *punish the producer of a product* by participating in the evaluation system” at Column 9, lines 43-46. Klingman therefore discloses only rating to reflect on the quality of the *product itself and punishing the producer of the product using ratings*, and does not teach or suggest *rating the seller, either directly or indirectly*. For example, if a user would give a rating to a book purchased from a book retailer, that rating would not be a direct or indirect rating of the book retailer. Thus, because Klingman does not disclose and is not concerned with rating a seller indirectly, there would be no motivation to modify Klingman to rate a seller directly.

Response (5). The Examiner characterizes Applicant’s argument (5) as follows: “Klingman allows a buyer to submit a review as soon as a book is purchased, even before the item is delivered, and therefore does not teach or suggest using different survey timings based on how long it takes consumers to read books (i.e. claim 26) and instead uses the same timing for every type of item.” The Examiner responds, in part, by apparently relying on the Examiner’s assertion that the use of the phrase “inference” is indefinite. Applicant notes that in view of the claim amendments, this portion of the Examiner’s argument is moot. The Examiner admits that Klingman does not disclose an inference being based at least on a customer survey of how long it takes consumers to read books. Nonetheless, the Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to make an inference based on a customer survey about books in order to form an opinion based on a consumer survey about the length of time it takes consumers to read books because does so would provide the estimate with more accurate information with which to base his/her estimates.

However, because Klingman does not disclose and is not concerned with making the claimed inference, does not disclose estimating the length of time it takes consumers to read books, and further does not disclose conducting a survey, there would be no motivation to modify Klingman so that an inference is based at least on a customer survey on how long it takes consumers to read books as recited by Claim 26. Indeed, because Klingman allows a buyer to submit a review as soon as a book is purchased, and even before the buyer receives the book, Klingman has no need to make an inference, or base an inference on a customer survey, much less base an inference on a customer survey on how long it takes consumers to read books.

Response (6). The Examiner characterizes Applicant’s argument (6) as follows: “Klingman does not teach or suggest a method where the inference is based at least on an

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estimation of how long it will take to evaluate the purchased item.” The Examiner responds, in part, by apparently relying on the Examiner’s assertion that the use of the phrase “inference” is indefinite. Applicant notes that in view of the claim amendments, this portion of the Examiner’s argument is moot. The Examiner further argues that Klingman “infers that the review request would be made available at the time just after purchase.” However, rather than inferring when the review request would be made available, amended Claim 24, for example, recites that the inference is based at least on an estimation of how long the evaluation of the purchased item will take. By contrast, Klingman discloses accepting reviews through the user-initiated “clicking” of the “SCORE” button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, and whether or not a user has had time to evaluate a purchased product*. Thus, contrary to the Examiner assertion, the same review request (the “SCORE” button) in Klingman is presented to the user both before and after purchasing a product, and is not displayed in response to, or just after a purchase.

Response (7). The Examiner characterizes Applicant’s argument (7) as follows: “[N]either Klingman nor Chislenko teach or suggest presenting the user a list of purchased items and asking the customer if he/she wants to review one or more of the items.” In the response, the Examiner admits that she never asserted that the saved list of items where purchased items of the customer’s, just that the customer would rate the items presented in the list. However, Claim 28 does not recite that a customer would rate the items presented in any list. Instead, Claim 28 recites “presenting to the customer a list of items purchased by the customer and asking the customer if the customer wants to review one or more of the listed items.” Thus, the Examiner admits the she has not provided a modification of Klingman with the disclosure of Chislenko that would provide the claimed method of “presenting to the customer a list of items purchased by the customer and asking the customer if the customer wants to review one or more of the listed items.” Because a prima facie case of obviousness is required by M.P.E.P. § 2143 to have prior art that teaches or suggests every element of the claim, the Examiner has failed to make a prima facie case of obviousness with respect to Claim 28.

Discussion of Rejections under 35 U.S.C. § 102(a) and (e) over Klingman

As an initial matter, Applicant respectfully notes that though Klingman was cited in each of the three prior office actions, the Examiner had not previously argued that Klingman anticipated any of the claims of the present applications.

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With respect to amended Claim 18, Klingman simply does not teach or suggest the invention as claimed. For example, Klingman neither teaches nor suggests “inferring, using information stored in an electronic database, when the customer has evaluated the item based at least in part on one or more of a characteristic of the item or a subsequent purchase of another item” or “providing over the network an electronic review request in response to at least the inference at a time spaced apart from the order, wherein the review request requests that the customer provide a review of the purchased item and includes a link to an electronic review form.”

Applicant respectfully traverses the Examiner’s characterization of Klingman. As discussed in Applicant’s previous response, Klingman, at Column 8, lines 22-25 recites “The mechanism described herein is based on the belief that the best information comes from previous buyers, those who have purchased and used the product being scored. The validity is achieved by preventing multiple access to the scoring mechanism,” and thus, rather than disclosing the method as claimed, or any method other than preventing multiple access, this citation merely discloses a belief upon which the described mechanism is based.

Klingman further discloses accepting reviews through the user-initiated “clicking” of the “SCORE” button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product*. Similarly, Klingman, at Column 20, lines 55-59, recites “In FIG. 8(b), after some variable amount of time, in step 194, the buyer may use the product as indicated by step 196. At decision block 198, the buyer may have the option of critiquing the product if he/she has not suppressed caller ID as discussed earlier.” Thus, this citation fails to disclose providing a review request in response to at least the inference at a time spaced apart from the order. Rather, Klingman, at Column 20, lines 55-59, appears to disclose that it is up to the buyer to decide to wait a period of time and then it is further up to the buyer to initiate submitting a critique. Applicant further notes that the Examiner, at page 32 of the August 27, 2003 Office Action, the Examiner admits that Klingman does not disclose inferring when the customer has evaluated an item. Indeed, the Examiner in Response (12), page 8, of the August 27, 2003 Office Action states that “the ‘Score’ button is always present on the interface.”

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Therefore, Klingman does not disclose or suggest, and is not concerned with “inferring, using information stored in an electronic database, when the customer has evaluated the item based at least in part on one or more of a characteristic of the item or a subsequent purchase of another item” or “providing over the network an electronic review request in response to at least the inference at a time spaced apart from the order, wherein the review request requests that the customer provide a review of the purchased item and includes a link to an electronic review form” as recited by amended Claim 18. Because Klingman fails to disclose every element of Claim 18, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 18 and to allow Claim 18.

With respect to Claim 20, Klingman fails to teach or suggest that “the review is a textual review including a plurality of words entered by the customer, and further comprising presenting the received textual review to other customers in conjunction with an indication that the textual review is from a purchaser of the item,” as recited by Claim 20. Instead, Klingman appears to merely disclose presenting numeric, graphical, or cartoon icon reviews.

In particular, the Examiner takes the position that Klingman, in Figure 5, column 5, lines 56-59, Column 8, lines 19-27 and 33-38, column 9, lines 30-35, Column 12, lines 18-30 and 51-63, teaches a method wherein the review is a textual review including a plurality of words entered by the customer, and further comprising presenting the received textual review to other customers in conjunction with an indication that the textual review is from a purchaser of the item. As discussed in Applicant’s previous responses, with respect to Figure 5, if the Examiner is referring to the box labeled “COMMENTS, ETC.”, Applicant respectfully notes that there is no discussion in Klingman what comments are being referred to. For example, the comments can be related to an explanation of when the graphs were generated, rather than being textual reviews.

Further, Klingman, at Column 12, lines 18-30 and 51-63, Column 13, lines 15-19 and 40-49, fails to provide any discussion of presenting a textual review, including a plurality of words entered by the customer, to other customers. For example, Klingman, at Column 12, lines 18-30, merely recites “In an alternative embodiment (not shown), the evaluation of a product may be based on a digital YES/NO decision scheme as opposed to a weighted or analog value scheme. The latter being the scheme described above and presented in FIG. 6 wherein a range of values, e.g. 1-100, may be used to rate or evaluate a product. That is, rather than a range of values

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associated with the rating information, the user of a product (or a voter voting in a poll or election which is alternative application of the preferred embodiment, explained in greater detail later) may provide a 'YES' input if satisfied with the product or a 'NO' input representing dissatisfaction with the product." Thus, rather than disclosing providing a textual review Klingman merely discloses a user providing a *digital* YES/NO indication as to whether the user was satisfied with the product. There is no discussion as to whether a textual review is presented to other customers as claimed.

Similarly, Klingman, at Column 12, lines 51-63, merely recites "At least two major approaches to handling special interest groups are possible with this invention. The first approach involves using defined categories and performing mathematical analyses on the scoring data with respect to these categories. A second approach involves linking to specialty sites in which the product may be reviewed in a special light where the reviewers' recommendations are written with emphasis on the special concerns of the group. In the second approach, either the special interest groups can be named by the seller when the product is placed on the market or with suitable design, the special interest groups can request that links to their site be added at some future time." There is no indication that the written reviews discussed in Klingman, at Column 12, lines 51-63, are textual reviews, and even assuming *arguendo* that the written reviews were textual reviews, there is further no disclosure or suggestion that textual reviews are presented to other customers.

Further, Klingman, at Column 13, lines 15-19 and 40-49, simply recites "While graphs or score displays such as those shown in FIGS. 5 and 6 may be employed in the preferred embodiment to represent distribution of scores over all responding scorers, other forms of representations of rating information may be utilized. For example, the simplest score is a value selected from a range, such 1 to 10 or 1 to 100. ... First, as the Internet becomes ubiquitous and more commerce occurs over the net, sophisticated information should be available to those who desire the same. Second, it is always possible to simplify the presentation of information. For example, some print newspapers use an icon in the movie review section in which the stylized view ranges from absent (having walked out) to sleeping, to upright and alert to standing on the chair applauding. "Complex" graphic scores can readily be mapped into simple "cartoon" icons to provide such simplistic displays."

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Thus, here Klingman merely discloses providing numeric, graphical, or cartoon icons, rather than providing textual reviews to other customers. Therefore, Klingman does not teach or suggest the claimed invention. As requested in Applicant's previous response, if the Examiner maintains claim rejections based on the argument that Klingman discloses that a textual review is displayed to other customers as claimed, Applicant respectfully requests that the Examiner specifically quote the corresponding language from Klingman to clarify the rejection. Because Klingman fails to disclose every element of Claim 20, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 20 and to allow Claim 20.

With respect to Claim 24, the Examiner takes the position that Klingman (at Column 8, lines 22-25, Column 9, lines 9-13 and 41-46, and Column 20, lines 55-59) discloses "where the inference is based at least on an estimation of how long it will take to evaluate the purchased item." However, Klingman does not perform the inference as claimed, and so does not base an inference at least on an estimation of how long it will take to evaluate the purchased item. Indeed, the system disclosed by Klingman does not even estimate how long it will take to evaluate the purchased item.

As similarly discussed above with respect to Claim 18 and in Applicant's prior response, Klingman, at Column 8, lines 22-25, recites "The mechanism described herein is based on the belief that the best information comes from previous buyers, those who have purchased and used the product being scored. The validity is achieved by preventing multiple access to the scoring mechanism." Thus, rather than disclosing the method as claimed, or any method other than preventing multiple access, this citation merely discloses a belief upon which the described mechanism is based.

Similarly, Klingman, at Column 9, lines 9-13 and 41-46, recites "After the purchase of the product, the buyer may wish to rate the purchased product by assigning a score with a range of scores offered by the merchant, corresponding to the degree of satisfaction of the purchased product by the buyer. ... Assuming that after a period of use the buyer has come to an opinion on the quality of the purchased product (it may be a superior product, or it may be an inferior product), the buyer may wish to help other buyers and reward or punish the producer of the product by participating in the product evaluation system. If so, the buyer may then link again to the product's web page located on TRY server 40 (in FIG. 3) which was earlier accessed by the buyer when trying a demonstration version of the product." Thus, this citation teaches away

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from the invention as claimed as the same screen is provided whether or not the user has purchases the item. Indeed, Klingman discloses accepting reviews through the user-initiated “clicking” of the “SCORE” button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, and whether or not a user has had time to evaluate a purchased product.*

Similarly, Klingman, at Column 20, lines 55-59, recites “In FIG. 8(b), after some variable amount of time, in step 194, the buyer may use the product as indicated by step 196. At decision block 198, the buyer may have the option of critiquing the product if he/she has not suppressed caller ID as discussed earlier.” Thus, this citation fails to disclose providing a review request in response to at least an inference, wherein the inference is based at least on an estimation of how long it will take to evaluate the purchased item. Rather, Klingman, at Column 20, lines 55-59, appears to disclose that it is up to the buyer to decide to wait a period of time and then it is further up to the buyer to initiate submitting a critique.

Klingman therefore fails to disclose “where the inference is based at least on an estimation of how long the evaluation of the purchased item will take,” as recited by amended Claim 24. Because Klingman fails to disclose every element of Claim 24, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 24 and to allow Claim 24. Similarly, because Klingman fails to disclose every element of Claim 35, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 35 and to allow Claim 35.

Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman in view of Geerlings

Claims 1-4, 6, 9-13, 22, 23, 25, 27, 30-34, and 36-40 were rejected under 35 U.S.C. § 103(a) over Klingman in view of Geerlings. To establish a prima facie case of obviousness the prior art reference must teach or suggest *all* [emphasis added] the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143. Because Klingman in view of Geerlings fails to teach or suggest all the elements of Claims 1-4, 6, 9-13, 22, 23, 25, 27, 30-34, and 36-40, Applicant respectfully traverses the Examiner’s rejection of Claims 1-4, 6, 9-13, 22, 23, 25, 27, 30-34, and 36-40.

By way of example, with respect to Claim 1, in characterizing Klingman, the Examiner argues that Klingman discloses estimating by what date the first customer will have at least initially evaluated the item, and further states that Klingman discloses that after a period of use

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the customer has evaluated the quality of a purchased item. Applicant respectfully traverses the Examiner's characterization of Klingman. Even if Klingman discloses that after a period of use the customer has evaluated the quality of a purchased item, nowhere does Klingman disclose or suggest estimating by what date the first customer will have at least initially evaluated the item. Indeed, none of the citations provided by the Examiner discuss performing such an estimation. If the Examiner maintains the rejection based on the argument that Klingman discloses estimating by what date a first customer will have at least initially evaluated an item as claimed, Applicant respectfully requests that the Examiner specifically quote the corresponding language from Klingman to clarify the rejection.

By way of further example, the Examiner further characterizes Klingman as disclosing initiating an electronic transmission, based at least in part on the estimated date, to the first customer on or after the estimated date requesting the first customer to provide a review of the item to thereby encourage the first customer to provide at least one review, wherein the message includes a link to an electronic review form and activation of the link by the first customer causes the review form to be presented to the first customer. The Examiner argues the Klingman discloses that after verifying that the customer has previously purchased the item, thus the system knows that the customer has had the opportunity to use the item and come to an opinion about the quality.

Applicant respectfully traverses the Examiner's characterization of Klingman. As similarly discussed above, Klingman discloses submitting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product*. Indeed, the Examiner, in Response (12), page 8 of the August 27, 2003 Office Action, states that "the 'Score' button is always present on the interface." Thus, the "SCORE" button disclosed by Klingman is not transmitted to the user based at least in part on the estimated date by which the first customer will have at least initially evaluated the item. Further, in contrast to the Examiner's assertions, the system disclosed by Klingman does not "know[s] that the customer has had the opportunity to use the item and come to an opinion about the quality." Indeed, Klingman appears to allow a buyer to submit a review as soon as a product is purchased, and even before the product is delivered to the user. Nowhere does Klingman

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disclose initiating an electronic transmission, based at least in part on an estimated date for evaluating the product.

The Examiner admits that Klingman fails to disclose “estimating a date for the communication to take place based at least on the item type and initiating the communication on or after this date, the message including a link to another forming [sic] that causes the form to be presented.” Nonetheless, the Examiner states the Geerlings teaches sending a communication to a consumer a certain determined amount of time after the purchase of a specific item, initiating the communication message. However, even assuming Geerlings discloses “sending a communication to a consumer a certain determined amount of time after the purchase of a specific item, initiating the communication message,” Geerlings does not teach or suggest “estimating by what date the first customer will have at least initially evaluated the item based at least on the item type” as claimed. Indeed, the Examiner has not even asserted that Geerlings estimates by what date the first customer will have at least initially evaluated the item based at least on the item type.

Even assuming *arguendo* that Geerlings discloses estimating by what date the first customer will have at least initially evaluated the item based at least on the item type, there would be no motivation to modify Klingman with the teaching of Geerling. The Examiner argues that it would have been obvious to one of ordinary skill in the art to send out the review request of Klingman using the communication planning and scheduling system of Geerlings in order to more efficiently achieve marketing goals by ensuring that pertinent and timely communications are made to customers. However, Klingman has no need for the planning and scheduling system of Geerlings in order to request that a customer provide a review as Klingman already provides a “SCORE” button for submitting reviews. Further, Klingman does not disclose that review requests are intended to “efficiently achieve marketing goals” and so there would further be no motivation to modify Klingman with the disclosure of Geerlings as argued by the Examiner.

Because a prima facie case of obviousness is required by M.P.E.P. § 2143 to have prior art that teaches or suggests every element of the claim, and because Klingman in view of Geerlings fails to teach or suggest all the elements of Claim 1, as discussed above, and further, because there would be no motivation to modify Klingman with the disclosure of Geerlings as

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proposed by the Examiner, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 1 and to allow Claim 1.

With respect to Claim 2, Klingman discloses that all score displays should include a simple numerical score and a range, and that the single score value represents an integrative function of total scores, such as an average or mean value over total scores. See Column 13, lines 18-30. Klingman does not disclose individually presenting the first customer review in a group of reviews to a second customer interested in the item, wherein the review is a numerical rating. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 2 and to allow Claim 2.

With respect to Claim 3, with respect to the box labeled "COMMENTS, ETC." illustrated in Figure 5, there is no discussion in Klingman what is the content or intent of the comments. For example, the comments can be related to an explanation of when the graphs were generated, rather than being a textual review of one customer being presented to another customer. Further, Klingman, at Column 13, lines 15-19 and 40-49, simply recites

"While graphs or score displays such as those shown in FIGS. 5 and 6 may be employed in the preferred embodiment to represent distribution of scores over all responding scorers, other forms of representations of rating information may be utilized. For example, the simplest score is a value selected from a range, such 1 to 10 or 1 to 100. ... First, as the Internet becomes ubiquitous and more commerce occurs over the net, sophisticated information should be available to those who desire the same. Second, it is always possible to simplify the presentation of information. For example, some print newspapers use an icon in the movie review section in which the stylized view ranges from absent (having walked out) to sleeping, to upright and alert to standing on the chair applauding. "Complex" graphic scores can readily be mapped into simple "cartoon" icons to provide such simplistic displays."

Thus, Klingman merely discloses providing numeric, graphical, or cartoon icons, rather than a review that includes a plurality of words provided by a customer, as claimed. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 3 and to allow Claim 3. Applicant similarly traverses the rejection of Claim 4 and respectfully requests the Examiner to withdraw the rejection of Claim 4 and to allow Claim 4.

With respect to Claim 6, Klingman has no need for the planning and scheduling system of Geerlings in order to request that a customer provide a review as Klingman already provides a "SCORE" button for submitting reviews. Further, Klingman does not disclose that review

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requests are intended to “efficiently achieve marketing goals” and so there would further be no motivation to modify Klingman with the disclosure of Geerlings as argued by the Examiner, to provide the review request via e-mail. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 6 and to allow Claim 6.

With respect to Claim 10, Klingman does not discuss and is not concerned with providing recommendations, much less personalized recommendations. Therefore, there would be no motivation to modify Klingman with the collaborative filter of Geerlings as proposed by the Examiner. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 10 and to allow Claim 10. Applicant similarly traverses the rejection of Claims 22 and 23, and respectfully requests the Examiner to withdraw the rejection of Claims 22 and 23 and to allow Claim 22 and 23.

With respect to Claim 11, the Examiner appears to assert that Klingman, in disclosing rating a product, discloses indirectly rating the seller. The Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to rate the seller of the item directly. However, the Examiner has mischaracterized Klingman. As discussed in Applicant’s previous response, Klingman teaches rating an item as a way of *punishing the producer*, not the seller, of a product. Because Klingman is not concerned with rating the seller, either directly or indirectly, there would be no motivation to modify Klingman as proposed by the Examiner.

For example, Klingman discloses that “where *consumer feedback regarding a product* is favorable to the seller, scoring or rating information can be a very effective marketing tool for the seller” at Column 1, lines 42-44 [emphasis added], and “the buyer may wish to . . . *punish the producer of a product* by participating in the evaluation system” at Column 9, lines 43-46. Klingman therefore discloses only rating to reflect on the quality of the *product itself and punishing the producer of the product using ratings*, and does not teach or suggest *rating the seller, either directly or indirectly*. For example, if a user would rate a book purchased from a book retailer, that rating would not be a direct or indirect rating of the book retailer. Thus, because Klingman does not disclose and is not concerned with rating a seller indirectly, there would be no motivation to modify Klingman to rate a seller directly. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 11 and to allow Claim 11.

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Applicant similarly respectfully requests the Examiner to withdraw the rejection of Claim 37 and to allow Claim 37.

With respect to Claim 12, the Examiner admits that Klingman does not disclose receiving at least one e-mail address provided by the first customer, the email address being that of a person other than the first customer, or forwarding the review to the e-mail address. Indeed, while the Examiner discusses gifts, Klingman does not even mention gifts. Further, while the Examiner argues that it would be obvious to modify Klingman with the teachings of Geerlings to provide the claimed invention in order to ensure that pertinent and timely communications are made to customers, the Examiner did not provide a motivation to forward a review to an email address provided by a first customer, where the email address is that of a person other than the first customer. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 12 and to allow Claim 12. Applicant similarly respectfully requests the Examiner to withdraw the rejection of Claim 34 and to allow Claim 34.

With respect to Claim 13, because the system disclosed by Klingman is configured to allow a buyer to submit a review as soon as a book is purchased, and even before the buyer receives the book, Klingman has no need to estimate a date based at least in part on the length of the book as claimed. Therefore, there would be no motivation to modify Klingman as proposed by the Examiner.

Further, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.). MPEP, § 2143.01. Here, Klingman discloses that *when a 900 number purchase occurs, the buyer's caller ID is*

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stored in the ID table 52 (FIGS. 3 and 4) which is maintained by BUY server 48. When a buyer wishes to "SCORE" the purchased product, as indicated by "clicking" on the SCORE button of the TRY display, an '800' number is retrieved from the TRY server, and this number is used to place a call to the BUY server 48 that maintains the ID table 52. A caller ID will accompany the incoming '800' number call to the BUY server. This incoming caller ID is used to search the table of stored buyers' caller ID numbers. If a match is found, the buyer is allowed to enter his/her score in accordance with his/her satisfaction with the product. The buyer's caller ID number is then deleted from ID table 52 by BUY server 48 thereby allowing each purchaser of the product one and only one opportunity to score the product. Column 10, lines 46-61.

Here the modification proposed by the Examiner would change the principle under which the system disclosed by Klingman is designed to operate. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 13 and to allow Claim 13. Applicant similarly respectfully requests the Examiner to withdraw the rejection of Claim 33 and to allow Claim 33.

With respect to Claim 25, the Examiner admits that neither Klingman nor Geerlings disclose that a review request is selectively delivered on one of a weekend and a holiday. Indeed, neither Klingman nor Geerlings even disclose selectively delivering a review request and are not concerned with selectively delivering a review request. Because Klingman is not concerned with and does not disclose selectively delivering a review request, there would be no motivation to modify Klingman as proposed by the Examiner. Further, as similarly discussed with respect to Claim 13, the modification proposed by the Examiner would change the principle under which the system disclosed by Klingman is designed to operate, and so the teachings of Klingman and Geerlings are not sufficient to render the claims prima facie obvious. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 25 and to allow Claim 25.

With respect to Claim 27, Klingman discloses accepting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product.* Thus, as discussed above with respect to Claim 1, Klingman does not and has no need to make an inference of when the customer has evaluated a first item, much less an inference based at least in part on the customer ordering a second item as claimed.

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Indeed, the Examiner has failed to discuss how Klingman could be modified with the disclosure of Geerlings to make an inference based at least in part on the customer ordering a second item as claimed. Instead, the modification proposed by the Examiner was simply to make inferences using the purchasing patterns of Geerlings. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 27 and to allow Claim 27.

Because neither Klingman or Geerlings alone or in combination teach, suggest, or are concerned with inferring when the customer has evaluated the item, the cited references further fail to teach or suggest that “where the item is a car and the act of inferring when the customer has evaluated the item is related to an estimated time it will take the customer to drive a first amount,” as recited by amended Claim 30, and there would be no motivation to modify Klingman or Geerlings to do so. The cited references further fail to teach or suggest that “where the item is a video and the act of inferring when the customer has evaluated the item estimated time period is related to an estimated time until the customer has viewed the video,” as recited by Claim 31, and there would be no motivation to modify Klingman or Geerlings to do so. Similarly, the cited references further fail to teach or suggest that “where the item is an audio recording and the act of inferring when the customer has evaluated the item is related to an estimated time until the customer has listened to the audio recording,” as recited by Claim 32, and there would be no motivation to modify Klingman or Geerlings to do so. Applicant therefore respectfully traverses the rejection of Claims 30-32 and respectfully requests that the Examiner allow Claims 30-32.

With respect to Claim 36, the Examiner argues that Klingman teaches setting a time to allow a review request of a consumer, wherein the time is selected based on an estimated evaluation period. However, the Examiner has mischaracterized Klingman. Klingman does not disclose or suggest “setting a time to allow a review request of a consumer, wherein the time is selected based on an estimated evaluation period,” as argued by the Examiner. Instead, Klingman, as previously discussed, discloses accepting reviews through the user-initiated “clicking” of the “SCORE” button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product*. Further, the system disclosed by Klingman will accept a review for an item as soon as the item is purchased, and even before the item is delivered and evaluated

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by the user. Hence, Klingman does not disclose and is not concerned with selecting a time to allow a review request of a consumer based on an estimated evaluation period, as argued by the Examiner.

Indeed, Klingman does not disclose selecting a time to request a review, as admitted by the Examiner. Further, Klingman fails to disclose or suggest estimating an evaluation period. Therefore, Klingman does not select a time based at least in part on an estimated evaluation period. Thus, as discussed above with respect to Claim 1, Klingman does not and has no need to estimate an evaluation time or select a time to request a review, much less select a time to request a review of the purchased item, where the time is selected at least in part on an estimated evaluation period, as claimed.

Additionally, Geerlings further fails to disclose or suggest using an estimated evaluation period to select a time to request a review, or using an estimated evaluation period to select a time for any other request. Thus, neither Klingman nor Geerlings, alone or in combination, teach or suggest “selecting a time to request a review of the purchased item, where the time is selected at least in part on an estimated evaluation period; and providing over the network an item review request, including a link to an electronic review form, wherein the timing of the request is based at least in part on the selected time” as claimed.

Indeed, the Examiner merely argues that “Klingman discloses a system that records identification of a purchase by a customer and allows a purchasing customer to review the purchases item. Geerlings discloses scheduling and planning communications with customers at a certain period of time after the purchases of a specific product. It would have been obvious to one of ordinary skill in the art at the time of the invention to send out the review request of Klingman using the communication planning and scheduling system of Geerlings in order to more efficiently achieve marketing goals by ensuring that pertinent and timely communications are made to customers.” The Examiner failed to discuss how modifying the system of Klingman with the communication planning and scheduling system of Geerlings would result in a system that could perform the method of “selecting a time to request a review of the purchased item, where the time is selected at least in part on an estimated evaluation period; and providing over the network an item review request, including a link to an electronic review form, wherein the timing of the request is based at least in part on the selected time” as claimed. Applicant

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respectfully maintains that such a modification is not disclosed or suggested by Klingman or Geerlings.

Further, as similarly discussed with respect with Claim 1, there would be no motivation to modify Klingman with the disclosure of Geerlings as proposed by the Examiner. Because Klingman in view of Geerlings fails to teach or suggest all the elements of Claims 36 as discussed above, and further, because there would be no motivation to modify Klingman with the disclosure of Geerlings as proposed by the Examiner, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 36 and to allow Claim 36.

With respect to Claim 38, because Klingman does not disclose presenting a review with the reviewing customer's name, and because the reviews presented by Klingman already appear to be anonymous, there would be no need or motivation to modify Klingman as proposed by the Examiner to make reviewers comfortable in giving reviews. Therefore, there would be no motivation to modify Klingman to provide an electronic review form allows a customer to specify whether the customer review is to be presented to others with the customer name or is to be presented to others anonymously. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 38 and to allow Claim 38.

With respect to Claim 40, the Examiner admits that Klingman does not teach that an evaluation period varies from a first item to a second item. Nonetheless, the Examiner uses Geerlings to supply the missing element. However, Geerlings is not concerned with and does not discuss an estimated evaluation period or an estimated evaluation period that varies from a first item to a second item. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 40 and to allow Claim 40.

Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman in view of Epinions

With respect to Claims 5 and 29, Klingman does not disclose and is not concerned with providing any type of review reward to a customer, much less offering "the first customer a reward in exchange for the customer providing a review, wherein the reward is provided if the review satisfies a first condition" as claimed. Thus, there would be no motivation to modify Klingman with the disclosure of Epinions as proposed by the Examiner. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claims 5 and 29 and to allow Claims 5 and 29.

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With respect to Claim 7, the Examiner admits that neither Klingman nor Geerlings discloses that a group of reviews are ordered based on at least a first reviewer characteristic, and relies on Epinions to supply the missing element. However, Epinions merely discloses ordering based on the review date rather than a reviewer characteristic. Therefore, the applied references, either alone or in combination do not provide the invention as claimed. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 7 and to allow Claim 7.

With respect to Claims 8 and 21, Klingman discloses that all score displays should include a simple numerical score and a range, and that the single score value represents an integrative function of total scores, such as an average or mean value over total scores. See Column 13, lines 18-30. Klingman further teaches that customer reviews are combined in the form of a graph representing the distribution of scores over all responding scorers, or an icon mapped from graph. Klingman does not disclose individually presenting customer reviews, and so there would be no motivation to modify Klingman to display a customer review in association with the reviewer name using the disclosure of Epinions as suggested by the Examiner. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claims 8 and 21 and to allow Claims 8 and 21.

Discussion of Rejection under 35 U.S.C. § 103(a) over Klingman

With respect to Claim 26, because Klingman does not disclose and is not concerned with making the claimed inference, does not disclose estimating the length of time it takes consumers to read books, and further does not disclose conducting a survey, there would be no motivation to modify Klingman so that an inference is based at least on a customer survey on how long it takes consumers to read books as recited by Claim 26. Indeed, because Klingman allows a buyer to submit a review as soon as a book is purchased, and even before the buyer receives the book, Klingman has no need to make an inference, or base an inference on a customer survey, much less base an inference on a customer survey on how long it takes consumers to read books. Therefore, there would be no motivation to modify Klingman as proposed by the Examiner. Applicant therefore respectfully requests the Examiner to withdraw the rejection of Claim 26 and to allow Claim 26.

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Discussion of Rejection under 35 U.S.C. § 103(a) over Klingman in view of Chislenko

With respect to Claim 28, the Examiner admits that Klingman fails to disclose presenting the customer with a list of items or asking the customer if the customer wants to review the items. However, the Examiner states that Klingman teaches “allowing the user to choose whether or not he/she wants to rate said item.” The Examiner also asserts that Chislenko, at Column 4, lines 5-9, teaches a “method further comprising presenting to the customer a list of items purchased by the customer and asking the customer if the customer wants to review one or more of the listed items.” The Examiner further asserts that it would be obvious “to present the customer with a list of items purchased and ask the customer to review one or more of the items because it increases the flexibility of the system and also makes the system more user friendly.”

Applicant respectfully traverses the Examiner’s characterization of Chislenko and the rejection of Claim 28.

Chislenko, at Column 4, lines 5-9, discloses:

Whenever a user profile is created, a number of initial ratings for items may be solicited from the user. This can be done by providing the user with a particular set of items to rate corresponding to a particular group of items.

Rather than disclosing “presenting to the customer a list of items purchased by the customer,” as argued by the Examiner, Chislenko does not contemplate presenting a list of items purchased by the customer. Indeed, Chislenko merely discloses presenting a list made to correspond to particular groups of items. Thus, Chislenko does not teach or suggest the element missing from Klingman, as asserted by the Examiner. Indeed, in Response (7) of the Office Action, the Examiner admits that she never asserted that the saved list of items where purchased items of the customer’s, just that the customer would rate the items presented in the list. Because a prima facie case of obviousness is required by M.P.E.P. § 2143 to have prior art that teaches or suggests every element of the claim, and neither Klingman nor Chislenko alone or in combination teach or suggest all claim elements, Applicant respectfully traverses the Examiner’s assertion of obviousness and the rejection of Claim 28.

Summary

In view of the foregoing remarks and amendments, Applicant respectfully submits that independent Claims 1, 18, and 36 are patentably distinct over the cited art and are in condition

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for allowance. Claims 2-13, 19-35, and 37-40, which correspondingly depend from independent Claims 1, 18, and 36 and further define Claims 1, 18 and 36, are likewise patentably distinct over the cited art and are in condition for allowance. Applicant respectfully requests allowance of Claims 1-13 and 18-40.

Respectfully submitted,

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